

MINUTES
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 Park 35 Circle, Bldg. A, Suite 173
September 16, 2011, 9:00 a.m.

1. Call Board Meeting to Order:

Mr. Smyth called the board meeting to order at 9:00 a.m. on September 16, 2011 and advised those present of a sign-in sheet for continuing education and a Certificate of Attendance upon adjournment of the meeting. Thirty eight licensees introduced themselves.

2. Floor Open to Public Comments:

Mr. Smyth opened the floor to public comments and advised that public comments will again be offered to those present at the end of the meeting. Comments are limited to those two times. There were no public comments at this time.

3. Introduction of new staff- A.G. Representative, Nancy Fuller and office staff, Stefani Scherer:

Mr. Smyth advised there were a couple of new faces with us. A new Attorney General Representative, Nancy Fuller and Stefani Scherer who is now employed by the Board. He welcomed both of them on board.

Mr. Smyth next advised that the Board was short two members today. Mrs. Nedra Foster and Mr. Bill O'Hara could not be here today. The following seven board members were present; Mr. Greg Smyth, Mr. Jon Hodde, Mr. Robert Price, Mr. James Childress, Mr. Paul Kwan, Mr. Gerardo Garcia and Mrs. Mary Chruszczak. Also present was Mr. Frank DiTucci and Mr. Garey Gilley.

4. Discussion possible approval and vote to approve the June 17th, 2011 Board Meeting minutes:

After a minor discussion, Mr. Price moved to accept the minutes as written. Mr. Hodde seconded the motion. All were in favor (7 to 0) to approve the June 17th, 2011 Board Meeting Minutes.

5. Service awards:

Mr. Smyth advised the Board of a presentation given to the Board on Parliamentary procedures by Mr. John W.K. Overby and a wish to present him with a certificate of appreciation. Hearing no objection, the certificate will be sent to him.

6. Director's Report:

A) Budget Report:

Mr. DiTucci advised that we will end the 2011 year with more funds than first thought. Mr. DiTucci went on to explain how that was so and that not counting possible incoming monies we would lapse about \$14,000. He also explained that purchases made were also already taken into consideration with the figures present and advised that the exam committees have been advised to submit their travel costs. Mr. DiTucci next explained the purchasing that

occurred since the last Board Meeting; 2 shredders, 2 printers that match our present fleet so parts and cartridges match up. Adjustments made to file system shelves, magazine boxes and Tyvek envelopes for complaint file rework. He added that we bite the bullet up front and now it is pay dividends. Mr. Garcia asked where this was reflected in the budget report provided. Mr. DiTucci advised he was looking at the 62 screen and that screen was a screen that showed the bottom line. Mr. Garcia asked if Mr. Gilley was our only investigator. Mr. DiTucci said "No, Mr. Gilley has recused himself from some cases. Other than that he is the only investigator." Mr. Garcia commented on the issue that it appears to him we need more help, both with investigation and in the office. Next a discussion took place over the agency's needs and the means to fund another FTE. An increase in Firm registration fees was discussed.

B) SORM:

The State Office of Risk Management visited with us some upon completion. They found three items that we could improve on; obtain a fire extinguisher, update our personnel manual, and use FEMA terms/language in our continuity plans. Mr. DiTucci also advised that he has already obtained a fire extinguisher. The SORM report is on file.

C) Comptroller Audit:

Mr. DiTucci advised that the Comptroller's audit group spent seven days at the agency. They found some minor coding errors and will be sending us a report. Mr. DiTucci advised that we have to watch out in our spending and not violate any of their rules. Presently we are waiting on their report.

D) Renewals/Fees and discussion over expiration dates:

Mr. DiTucci advised he has learned that many licensing agencies outside the State of Texas license on a biannual basis. Mr. DiTucci added that at renewal time agency attention and energy is drawn into the renewals and out of some other areas. If we could renew on a biannual basis then that would cut our work load by 50% and our collection would remain the same. Mr. DiTucci advised he had a packet of the states that use that format. Mr. DiTucci next added that the idea would require legislative effort that was outside of the board.

Mr. DiTucci next addressed fees for the upcoming year. He recommended leaving the fees the same but maybe raising Firm fees. They are requiring more effort to manage than first thought and an additional FTE would support our needs. Mr. Gilley also advised the Board of his concerns regarding the need to increase man power to address the Firms and perhaps an increase of \$25 would be enough to cover the required increase in manpower. Mr. Garcia asked questions regarding this notion. It was brought up that if we brought the money to the table for the FTE, then the money part of the equation would be moot. Mr. DiTucci went on to say that the Firms have recently been licensed and you can expect a session or two to shake out the problems and the problem is we need more staff. Mr. Garcia felt that a \$25 fee increase was rather insignificant. He went on to suggest that he feels we might require even more staff than what we are presently considering, maybe one or two from what he has seen. Next a discussion took place over the need to change the FTE count rather than the agency's

ability to collect the required funding. Mr. Smyth asked Mr. DiTucci to bring a figure he feels confident in to achieve the funding level for the additional staff to the next board meeting.

E) Correction to Moodle/web work:

Mr. DiTucci advised that recently there was some issues with Moodle as it related to our online Ethics course and the person that was once responsible for it was no longer with us. Mr. DiTucci advised he found a person to do our web work for \$50 per hour to include Moodle and updates as needed. This is far less than an FTE doing that type of work.

F) Investigative file organizational plan:

Mr. DiTucci advised he has purchased the magazine boxes and Tyvek envelopes as well as had the shelves adjusted to 15" to accommodate the size of the maps. This is in preparation to continue the reorganization of the complaint files. Next a lengthy discussion took place on how volunteers might be able to help. Also, the retaining of those files in an electronic format was addressed as well as what was required of the agency under records retention. Mr. DiTucci was charged with checking with the Engineers' Board regarding their records retention of investigative files and to also check to see when we can next change our retention schedule.

G) Volunteer program:

Mr. DiTucci advised that recently he had a volunteer provided by the Workforce Commission and when we are ready to rework the investigative files we can get some help there and have Stefani lead that effort.

H) Computer system rework/update:

Mr. DiTucci advised the Board that the Texas Commission on Environmental Quality's computer system will soon require 64 bit computers. Mr. DiTucci went on to say that we have already achieved 64 bits because the Executive Director of the Health Professions Counsel offered us some hand-me-down computers that were better and newer than what we had. Additionally, those computers and what we had have been moved about and have been reprogrammed. Each was down for a day or two when changes were made. Mr. DiTucci ended by advising that at this point he was looking to purchase one computer.

I) Staff salary increases:

Mr. DiTucci advised the board that when we brought Stefani on, a career ladder program was put in place to fund her position for two years with an increase every 6 months as she became more learned in our process. At the same time everyone else received a small pay raise as well. Mr. DiTucci went on to say looking forward we may want to ask in the next session for a little bit more for an additional small pay raise at that time.

J) Upcoming LAR/Strategic Plans & FY 2011 Financial Report:

Mr. DiTucci advised that our Financial Report has not come in yet from those that do that work for us and we at present are waiting for it.

Next Mr. DiTucci went on to discuss our upcoming Strategic Plans and Legislative Appropriation Request (L.A.R.) by saying we need to start looking at what changes might be needed on the next L.A.R. which is the beginning of asking the Legislature for help with our needs. The Strategic Plans lay out what you're going to do and the L.A.R. advises what money is required to achieve your Strategic Plans. Strategic Plans are a 5 year projection and the L.A.R. is a 2 year projection. The increase in Firm registration fees to obtain addition FTE's will have to be part of those items. Mr. DiTucci advised that cycle is now coming upon us.

K) Data on renewals, new licenses and complaints FY 10 and FY 11:

Mr. DiTucci apologized to the board for not having the exact data on renewals, i.e. collections. He went on to say he felt collections were in the million 2 to million 4 range and if anyone wanted that data he could provide it. Mr. DiTucci next addressed complaints and advised there was still one complaint from FY 2010 that went to committee yesterday and that half of the 2011 complaints are already handled.

L) Open records requests:

Mr. DiTucci advised he has had three open records requests. One was an attorney that came by to collect some data on a licensee. One was from a group wanting to know what our salaries were. The third was a request for data associated with a licensee's complaint file.

M) Memorandum of Agreement between Texas Board of Professional Land Surveying and the Texas Board of Geoscientists:

Mr. Horton, Executive Director of the Geoscientist Board, stated the target of this Memorandum of Agreement is to work with agencies that receive Geoscientist work product. He added that the Texas Commission on Environmental Quality and the Railroad Commission have similar MOA's with them, and presently they are also seeking one with the Texas Water Development Board. Mr. Horton laid out how the agreement would work and asked if the Board had any questions. Mr. Horton clarified the issue the Board had earlier with item number 3 and 4. Additionally, the Board's AG Representative discussed Board concerns as well. After this review the Board agreed with this Memorandum of Agreement.

7. Discussion on the following:

A) Elevation and other GPS issues:

Mr. Gilley advised this is an FYI issue for the Board. It deals with a letter written to The American Surveyor Magazine in response to an elevation certificate article. Mr. Gilley responded noting when vertical data used by surveyors was not data used by FEMA, that's when issues occur.

Next, GPS issues were discussed and how "Light Squared" will interfere with such devices. Mr. Smyth advised there is nothing we can do about it. Voice your option to those people who make the decisions. This has become very political and there are many users that have shown opposition to it, as it is now.

B) Brooks Act:

The topic in this agency item relates to an issue regarding Federal and State procurement laws and the confusion that surveyors are having. After a lengthy discussion Mr. DiTucci was charged with communicating this to the Governor's Office because Federal issues were involved. Mr. Price added that the professional associations may also have a stake in this as well.

C) 4 Year Rule Review/Computer based testing and NCEES annual meeting:

Mr. DiTucci advised the Rule Review process has begun and Board members have a book in front of them that is tabbed out. Mr. Gilley has taken the lead and this is a work in progress and will also tie to computer based testing of SIT's through NCEES with updated rules for that change as well. Mr. Hodde advised the Board of his trip to the annual NCEES seminar and reported that as of January 2014 SIT exams will be computer based. The last paper exam will be at the end of 2013. He added the item banks are being expanded for that purpose. The exam will be offered in locations around the country eight times per year. At the present time, locations of Dallas and Houston were brought up. However, Austin was not. Applicants will schedule their own time and place to take the exam.

The Board discussed that we'll need to go through our rules to make necessary changes as it relates to computer based testing. Also there may be some statutes that may need to be changed to address computer based testing so on the Act side it may take some legislation.

D) Email received from Jerry Carter, NCEES:

The Board discussed the email sent by Jerry Carter from NCEES relating to NCEES offering to administer our licensing exams with the exception of our 2 hour legal exam. A lengthy discussion occurred over boundary issues, Spanish land grants, costs and our continued need to keep exam committees in place was addressed. No one seemed to favor the idea presented by Mr. Carter.

The Board took a break at 10:27am and was back in session at 10:45am. All member present before the break are present now.

8. Complaints- Garey Gilley, Investigator:

Mr. Gilley reported on the following cases:

11-02 Went to committee yesterday

11-04 Closed, no rule violation

11-09 Closed, their website is still down

11-10 Suspended license, reprimand and \$37,500 fine, request AG assistance

11-11 Title issues, no rule violation, dismissed upon review

11-21 No rule violation- Dismissed upon review

11-26 No rule violation- Dismissed upon review

11-29 No rule violation- Dismissed as frivolous by Board vote

11-31 No rule violation- Dismissed as frivolous by Board vote
11-32 No rule violation- Dismissed upon review
11-34 No rule violation- Dismissed as frivolous by Board vote
11-35 No rule violation- Dismissed as frivolous by Board vote
11-42 Order sent to C/D, he's still continuing, request AG assistance

Mrs. Chruszczak reported on the following case:

2011-00919 Reprimand and \$15,300 (2 additional complaints against surveyors to come. The Board agreed with the action)

The Board went into Executive Session at 11:25am to discuss Flow Chart of Investigations and Complaint Process. The Board was out of Executive Session at 12:20pm. No action was taken in closed Session.

The Board was back in open Session at 1:00pm. All Board members present before closed Session are still present.

9. Committee Reports:

A) Executive Committee- Greg Smyth; Chair:
No report

B) Rules Committee- Greg Smyth; Chair:

1) Discussion, possible approval and vote to amend and/or adopt amendments to Board Rule 661.47(b)-Reciprocal Registration:

Mr. Smyth advised that if the Board was going to discuss this at length they will need a motion to approve. A motion was made by Mr. Kwan and seconded by Mr. Hodde. In discussion, Mr. Kwan stated he felt this Rule was a way to get around our statutes/education requirements and a person could license in a state, not practice, and thus have had no discipline against them and a clean record. If the person had enough money they could license in 25 states and then choose to use the state that they have a clean record in and we would not know. Mr. Kwan added we should leave the rule as it is and treat each case individually. Mr. Gilley stated this rule was crafted to clarify the rule and the Board's authority. Others stated they did not see how it would. Mr. Kwan advised that the Board may waive any requirement (1071.259). Next a lengthy discussion took place. A vote was called to approve the language as written. The vote was 7 to 0 to NOT approve the amendment to 661.47(b).

Mr. Gilley laid out possible changes to Rule 661.31 which he is working on. Language that could be added is Electronic Communication or Web Site. Mr. Garcia made the motion to propose these changes. It was seconded by Mrs. Chruszczak. All were in favor 7 to 0.

Mr. Smyth charged Mr. Gilley to work on a new Rule regarding Firms to include Firm registration number on documents and advertisements. Mr. Gilley advised that the language used by the Engineer's Board should be the language we use.

Mr. Gilley reported on work being done and Board Rule 661.57, paragraph B is what is being looked at. The topic relates to the offer of services and the listing of the responsible individual for the survey work. The language being considered is "A full time active license holder who is employed with the entity shall affix his or her seal and signature to any land survey product produced by that entity." Mr. Price motioned to approve and publish the rule in the Texas Register. It was seconded by Mr. Garcia. There was no further discussion. A vote was called for. All were in favor (7 to 0)

C) RPLS/SIT Examination Committee- Jon Hodde:

Mr. Hodde reported that for the upcoming October 2011 exams, at present there are 56 individuals signed up to take the SIT exam. RPLS- 31 for the Legal, 39 for the Analytical and 39 for the Reciprocal. Comment was made that the Reciprocal is double the normal numbers.

D) LSLS Examination Committee- Bill O'Hara; Chair:

Mr. Hodde reported that there are 3 individuals to take the LSLS exam at this time and 4 retakes on the LSLS.

Mr. Childress left the meeting at this time.

E) Continuing Education Committee- Paul Kwan; Chair:

Mr. Kwan reported on the 2010 continuing education audit. On June 1st, 2010, 125 licensees were contacted. Of the 125, 5 were exempt because they were recently licensed. Only 3 of the remaining 120 did not have the required CEU's. They were contacted to their surprise and they did complete the courses. They were asked to pay a late penalty fee because this was the first time individuals keep their own records, \$374.00, Mr. Kwan advised they did not complain and they signed an affidavit of late renewal and identify work that was done. Mr. Kwan stated this got the word out. At the present time 89 people have requested the Ethics Course and you can get it online. Most people prefer the paper format.

Mr. Kwan next presented a policy statement to the Board allowing the Chair of the Continuing Education Committee the authority to be the source of dispute resolution relating to continuing education issues. Mr. Kwan read the policy statement to the Board. Mr. Price discussed how this might move into the enforcement area. The actual process was clarified for the Board. Mr. Kwan stated regarding those that were not in compliance, this year they do not have to recertify their work but next year they will. Mr. Garcia made a motion to adopt the policy. Mr. Hodde seconded the motion. There was no further discussion. A vote was called. All were in favor (6 to 0)

Mr. Kwan next addressed course approval for continuing education. He recommended approval of all the courses except for item 3 on page 3. Thirty six hours of continuing

education was requested, however Mr. Kwan recommended only twelve hours of continuing education for that course. Mrs. Chruszczak made the motion. Mr. Hodde seconded. There was no further discussion. A vote was called for and all were in favor (6 to 0)

F) Highway Issues Committee- Vacant; Chair:
No report

G) Oil Well Issues Committee- Jon Hodde; Chair:
Mr. Hodde reported that they are active in the South with oil and gas. He went on to say according to a recent study, the U.S. holds 2% of the world's oil and gas and that's a 900 year supply more than the Middle Eastern countries put together.

H) Legislative Needs Committee- Bill O'Hara; Chair:
No report

I) Complaint Review Process Committee- Paul Kwan; Chair:
Mr. Kwan stated he had nothing to report.

J) Task Force on registration of photogrammetrists, mappers and GIS professionals- Nedra Foster; Chair:
Filling in for Mrs. Foster was Mrs. Chruszczak. Mrs. Chruszczak reported they had their first meeting with the GIS community. That meeting was mainly a discussion. Of course they are not on board to be regulated but they are on board to identify the differences and doing an education program for the GIS and survey communities. This would be a cooperative effort. Mrs. Chruszczak advised meeting was with only the GIS people and our next meeting will include the photogrammetrists into the discussion.

10. Correspondence:

A) Approval of return to active status of William Lee McCown:
Mr. DiTucci advised the Board that a request to return to active status by William McCown #1719 was received. The Board approved the application.

B) Mr. DiTucci advised the Board of the correspondence, one from Eric Yahoudy #4862 and the other from Jerry LeLew, regarding monumentation and easements. Mr. LeLew was present and addressed Board Rule 663.17. He stated that he and Mr. Yahoudy have similar concerns. Mr. Smyth stated he will look at it.

C) Jack Green at Poteet High School wanting to start land surveying course and the Trig Star Program:
Mr. DiTucci advised the Board that Jack Green with the Poteet School District called seeking information to develop a training program. He was referred to the Texas Society of Professional Land Surveyors and was pleased with that referral.

11. Other Business- Schedule next Board meeting:

The Board discussed the scheduling of the next Board meeting. The 9th of December was brought forward. Mr. Garcia stated he had a scheduling issue with that date and would not be able to attend. Mr. Smyth state he understood.

12. Floor open to public comments:

Mr. Curtis Strong addressed the difficulty he had with getting a surveyor's name off of our web page.

Mr. William McCown wanted to know if we approved item 10A. The answer was yes.

Mr. Karl Bowles addressed the 10 year statutes of limitation and liability. He also felt it would be a good idea to increase the fees on Firms because of an increase in expense.

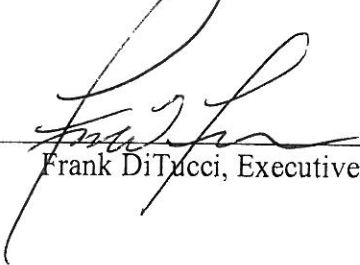
Mr. Amil Baker asked if we could get a P.A. system to amplify the meeting.

13. Adjournment:

Mr. Kwan motioned to adjourn. Mr. Hodde seconded. There was no further discussion. All were in favor. The Board adjourned at 2:27pm on September 16th, 2011.

ATTEST: _____


Greg Smyth, Board Chair


Frank DiTucci, Executive Director

12/9/11

TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CERTIFIED AGENDA OF CLOSED SESSION

I, Greg Smyth, the Presiding Officer of the Texas Board of Professional Land Surveying do hereby certify that this document accurately reflects all subjects considered in a closed session of the Board on September 16, 2011.

(a) The closed session began with the following announcement by the undersigned:
"The Texas Board of Professional Land Surveying is now in closed session on September 16, 2011 at 11:35 a.m."

(b) Subject matter of deliberation:
The complaint process. Agenda item 8.F. under Section 551.088 of the Open Meetings Act.

(c) No further action was taken, no votes were taken.

(d) The closed session ended with the following announcement by the undersigned:
"This closed session is ended on September 16, 2011 at 12:20 p.m."

No votes were taken in the closed session.



Greg Smyth, Presiding Officer
Texas Board of Professional Land Surveying